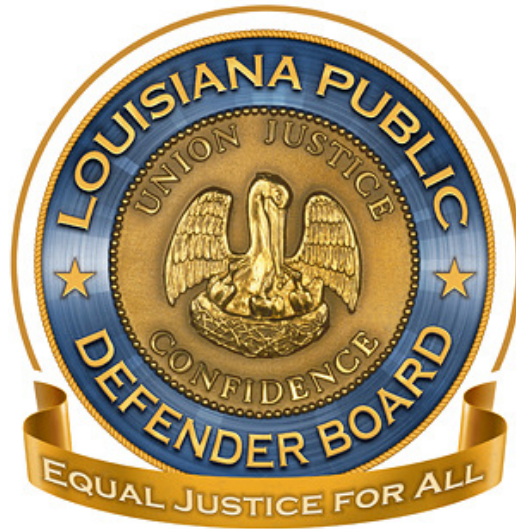


Louisiana Public Defender Board
&
District Public Defenders' Offices



Guide for Developing a
District Service Restriction Plan

Related to the
Restriction of Services Protocol
Promulgated March 20, 2012
Louisiana Register, Vol. 38, No. 3, Title 22

Introduction

On March 20, 2012, the LPDB Restriction of Services Protocol (LAC 22:XV.Chapter 17) was promulgated through the Administrative Procedures Act. Pursuant to Board directive, staff has prepared this 'Guide for Developing a Service Restriction Plan. Such a plan is required by the Restriction of Services Protocol where a district public defender office faces financial or caseload crisis. This Guide is intended to provide support to districts by outlining expectations for each district forced to implement the Restriction of Services Protocol.

Service Restriction plans must address the consequences of service restrictions upon the eligible clients who are appointed to the district public defender office for representation guaranteed by the United States and Louisiana State Constitutions. LPDB board and staff members are committed to implementing the vision of reform that was approved by the Louisiana Legislature in 2007 when it passed the Louisiana Public Defender Act. This vision includes the provision of qualified and competent counsel to all eligible defendants throughout the state as well as sufficient resources.

The chronic underfunding of public defense in Louisiana – at both the state level and through local revenue mechanisms – does not provide resources to ensure that defenders are able to allocate consistently qualified, competent counsel, and therefore places the state at risk of Constitutional violations. Per the Restriction of Services Protocol, LPDB will work with each district to ensure that its Service Restriction Plan is implemented fairly, efficiently and in a manner that advances the goals of attaining sufficient, sustainable resources for public defense delivery in Louisiana.

LPDB will support all **appropriate** Service Restriction Plans that are provided by the districts because LPDB believes that when a public defense service provider breaches the ethical obligations imposed by the *Rules of Professional Conduct*, the state fails to satisfy its obligation to provide effective assistance of counsel at each critical stage of the proceeding. LPDB recognizes that ethical responsibilities of the public defender and supervisors are implicated when caseloads are excessive. (See ABA Formal Opinion 06-441, May 13, 2006, *Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere With Competent and Diligent Representation*, attached).

Districts are required to begin preparations **as soon as** a service restriction is anticipated. The LPDB and district public defenders are obligated to do everything ethically and professionally possible to ensure that services are restricted in the manner determined to be the least harmful to the continuation of public defense services. This often requires contributions from many staff in the district office and many staff in each respective division at the state agency.

Service Restriction Protocol Timeline

Action	Restriction of Services Projection > 6 months	Emergency Restriction of Services (Projection < 6 months)	Date Completed
Notification of Impending Fiscal Crisis, Excessive Workload, or Both - Projection made by District Office or LPDB staff that crisis will occur within the next 12 months <small>Source: Louisiana Administrative Code 22:XV. Chapter 17 §1707</small>	Within 7 days of projection	Within 7 days of projection	
Discussion of Alternatives - District Defender shall discuss with Board staff viable alternatives to restricting public defense services within the district <small>Source: Louisiana Administrative Code 22:XV. Chapter 17 §1709</small>	Within 45 days of notice	Within 15 days of notice	
Development of Proposed Plan - Proposed written plan must be developed if unable to agree upon viable alternatives to restricting public defense services <small>Source: Louisiana Administrative Code 22:XV. Chapter 17 §1709, 1713</small>	Within 60 days of notice	Within 30 days of notice	
Comprehensive Site Visit by LPDB Staff - Confirm necessity of ROS; ensure ROS handled in manner which minimizes adverse effects of the local criminal justice system while avoiding assumption of caseload/workload levels that threaten the quality of client representation <small>Source: Louisiana Administrative Code 22:XV. Chapter 17 §1711</small>	Within 90 days of receiving the district defender's proposed service restriction plan	Within 45 days of notice	
Submit Final Service Restriction Plan <small>Source: Louisiana Administrative Code 22:XV. Chapter 17 §1717(A)</small>	Within 30 days of site visit	Within 30 days of site visit	
Plan Review & Approval by Board Staff <small>Source: Louisiana Administrative Code 22:XV. Chapter 17 §1717(B)</small>	Within 7 days of receipt of final plan	Within 7 days of receipt of final plan	
Service Restriction Plan Amendments – If further restriction is necessary, the District Defender shall notify the Board staff & submit amendments for approval	Within 60 days of projection	Within 30 days of projection	

Note: The Louisiana Public Defender Board staff reserves the right to monitor each district's revenues, expenditures, and personnel moves in advance of the 12 month notification date required by the Services Restriction Protocol.

Service Restriction Plan

Plan Development

If the District Defender and Board staff are unable to agree upon any viable alternatives to restricting public defense services, the District Defender shall develop a proposed written plan for restricting services, including staff and overhead reductions where necessary, and submit the proposed plan to Board staff.

- Service restriction plans should be tailored to each district based on public defender services delivery methods, funding levels, caseloads, workloads, and staff.
- The district must address the criteria by which management identified staff to be laid off/furloughed, and describe the documentation used to defend that decision. The District Defender and Board staff should attempt to preserve the district's support staff to the extent possible, by laying off/furloughing attorneys first and providing justification for release of support staff.
- For non-attorney support staff, the district must address the impact of layoffs/furloughs on the office's investigatory or administrative capacity.
- Public defender workloads must be controlled by the District Defender so that all matters can be handled competently; if workloads prevent public defenders from providing competent representation to existing clients, public defenders must neither be allowed nor required to accept new clients.
- **Service restriction plans shall not include office closure, as a contingency plan.**
- If the district's service restriction plan includes a reduction of attorney fees, access to expert witnesses, and any other salary/wage/fee caps, mileage reimbursements, etc., the district must produce applicable policies which describe each policy's effect on the availability and/or quality of representation to eligible clients.
- The district must identify and document any applicable restrictions related to access to training or other legal resources (WestLaw, etc.). Documentation must also describe the effect of the restrictions on the availability and/or quality of representation to eligible clients.
- The district must identify and document any applicable equipment and equipment-related restrictions (computers, Internet, Internet cards, video cameras, color printers, etc.). Documentation must also describe the effect of the restrictions on the availability and/or quality of representation to eligible clients.
- Service restriction plans must develop a communications plan addressing communications between public defenders and their clients; a proactive media plan; protocol for communication with all local criminal justice and other stakeholders.
- The district must provide a schedule for of all major actions proposed to be taken pursuant to the Service Restriction Protocol, with specific dates of implementation noted.
- For every action that is part of a district's restriction of services, the district must quantify the precise revenue increase or cost-savings that are anticipated to be created by that action.

Implementation of Plan

- Within seven days after receipt of the proposed final service restriction plan, Board staff shall review and approve, disapprove, or modify the plan as submitted. The plan becomes final upon the District Defender's receipt of the Board staff's approval.
- After the plan has been approved by Board staff, the District Defender shall give notice of the plan, together with a copy of the plan, to the court in accordance with §1703.A.9.b. and to the State Public Defender in accordance with §1703.A.9.a.
- The district should develop a statement of attorney-client and work-product privilege to accompany all communications.

Example: All information contained in this communication has been prepared in anticipation of litigation arising out of XX Public Defenders' Office Restriction of Services plan. As such, the information herein is privileged and/or confidential work product and intended only for the use of the addressee(s). If you are not the intended recipient, please notify the sender of the error and destroy the original message and any electronic or physical copies of it. Disseminating, distributing, or copying the content of this message is prohibited.

- The district should develop a statement on the restriction of services that reflects, conveys and implements the Service Restriction Plan. This statement should become part of all office documents (internal and public), beginning upon implementation of the service restriction period until such time as services are no longer restricted in the district.

Example: The XX Public Defenders' Office provides nearly _____[number of clients annually] annually court-appointed clients with the legal defense services guaranteed by the United States and Louisiana Constitutions. Despite diligent efforts by the Public Defenders' Office and many community partners, the resources necessary to continue meeting the needs of all clients are not forthcoming. Service restrictions caused by insufficient funding may create a constitutional crisis for indigent defendants who are guaranteed equal access to justice and may have practical consequences for the efficient administration of the criminal justice system and for the public safety of the community.

The XX Public Defenders' Office has, since anticipating a restriction of services (DATE), aggressively worked with the courts to collect and remit all monies legally designated for public defense, and calls upon community leaders to join in advocating for improved efficiency and effectiveness of local criminal justice practices, increasingly stable government appropriations for the public defender system, and sufficient funding for all criminal justice agencies. The Public Defenders' Office deeply regrets the hardships caused by the restriction of services and will continue to work with its partners to secure adequate, sustainable funding to restore its capacity to provide constitutionally mandated public defender services.

- The initial communication of the Service Restriction Plan should: Briefly list the conditions that produced the service restriction and summarize the efforts that the district has made to avoid this scenario; describe the proposed Service Restriction Plan; describe the proposed Service Restriction Plan timeline, detailing the actions and effect(s) of the Service Restriction Plan on the

various stakeholders; and, provide contact person(s) for questions or problems as the Service Restriction Plan is rolled out. At a minimum, there should be a separate letter for each court system and prosecution office.

- Copies of the final service restriction plan shall also be sent to the Chief Justice of the Louisiana Supreme Court, the President of the Louisiana State Bar Association, the chief and/or administrative judge of each court in the district in which public defender services are provided to indigent clients in criminal proceedings, and to the sheriff and parish president or equivalent head of parish government for each parish in accordance with §1703.A.9.c. It is also recommended that copies of the plan be submitted to the President of the local Bar Association and the District Attorney.
- Notices shall include the effective date of the service restriction and should be provided as soon as practicable.
- All outreach efforts should be documented.

Transferring Cases, Client Wait-lists, & Withdrawing from Cases

- The district must develop protocols to identify which lawyers, or groups of lawyers, will cover core classes of cases, both by court (e.g. district, municipal, traffic, juvenile) and by case type (misdemeanor, class one cases, class two cases, etc.)
- The district must develop protocols for transferring cases from laid-off lawyers to active lawyers.
- The district must develop protocols for notifying clients, courts, and prosecutors about new counsel.
- The district must develop protocols for placing clients on a waitlist, communicating the waitlist designation to clients and relevant stakeholders, if appropriate, and provide regular, recorded monitoring of the waitlist.
- The district must develop protocols for withdrawing from cases, if appropriate, and communicating that withdrawal to clients and relevant stakeholders.
- Waitlist and withdrawal protocols, if possible, should prioritize eligible clients who are incarcerated followed by clients charged with complex and/or severe crimes.
- The district must develop protocols on how the service restriction will affect service delivery to clients, including clients' statutory and constitutional rights to speedy trials.
- The district must develop protocols for notifying clients, courts and prosecutors about clients moved to any such waitlist.
- The district must develop protocols to provide adequate staff to respond to media inquiries, requests from judges and other related non-service work.

Litigation

- Should the district defender determine that litigation is necessary and/or imminent, (i.e., employment litigation arising out of the Service Restriction Plan; contempt litigation arising out of judicial responses to the Service Restriction Plan; *Citizen/Wigley* litigation related to funding; and, *Peart* or related caseload litigation), the district should take such action as necessary but only after giving notice to LPDB, and providing LPDB with appropriate information relating to litigation preparation.